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NPIC/TDS/D/6-1709
6 December 1966

MEMORANDUM FOR: Chief, Procurement Division, OL

ATTENTION:

THROUGH: Chief, Support Staff, NPIC

SUBJECT: Contracts

REFERENCES:

- a. Procurement Division/OL Memorandum to NPIC/
Assistant for Plans and Development, dated
28 October 1966
- b. NPIC/P&DS/D/6-1477 Memorandum, dated 21 July 1966

1. Your memorandum, dated 28 October 1966 (Reference a), requested assurance that NPIC would make funds available to the total amount [redacted] to cover a negotiated settlement of the subject contracts.

2. It is the position of the Technical Development Staff, NPIC, as clearly stated in our memorandum, dated 21 July 1966 (Reference b), that in order to effect an equitable settlement of these troublesome contracts and in order not to financially distress a valuable supplier, we would reluctantly support an after-the-fact, change of scope on what the contractor refers to as Item I "Vacuum Hold-Down Mechanism" as described in Paragraph 5 of Reference (b).

3. It is a source of great concern to this staff that a major portion of the contractual troubles evident in these contracts apparently originated from the fact that the type of contracts negotiated were not suited to the requirement of the technical development involved; i.e., a fixed price (supply type) contract for a research and development effort that was clearly pushing the state-of-the-art. This type of contract was strenuously objected to by representatives of this staff at the time of the original contract negotiations. This problem was further compounded by the failure to include the Development Objectives (a very specific document) as a part of the contract -- thereby binding us legally only to the Contractor's Proposal.

Declass Review by NIMA / DoD

4. This staff questions the size of the negotiated settlement, not because of the amount of money involved, but because we cannot see how this figure was obtained on the basis of a change of scope

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on only Item I as defined in paragraph 5 of Reference (b). The best figures this office has been able to obtain from the Agency auditors are as follows:

Source

Contractors Estimate
of Cost.

Auditor's Estimate
of Allowable Costs

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* This figure was derived by calculating the same percentage as the contractor allowed for both contracts. (Item I Cost
Items I, II, III, & IV Cost
Base figures as obtained from auditor.

5. We do not feel that we can accept the contractor's figures because they are obviously misleading. An analysis of the labor hours alone would indicate that [] the total labor spent on these two contracts was spent against the four (claimed) change of scope items leaving [] against the major engineering, fabrication, and check out of the equipment itself. Obviously, this is most unlikely. If we accept the auditors allowable costs chargeable against Item I this would indicate a settlement on the order [] not including profit. The Technical Development Staff feels strongly that we cannot support any settlement which would imply our sanctioning of a change of scope on items other than Item I (Vacuum Hold Down).

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6. There is a question confronting NPIC as to whether or not this change of scope can be charged against the year in which the change occurred or whether it must come from current year funds which are in short supply. The funding is further complicated by the fact that part of the cost of a settlement on Contract [] should be charged against the Army and Navy since two of the units purchased were theirs through joint procurement action -- unless the Agency is willing to absorb this cost. We have no basis for going to

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the Services for additional funds since they did not concur in the so-called change of scope -- to them, as to us, this was a fixed price contract. This is a very difficult problem we are trying to resolve. It will probably have to be ruled upon by the General Consul.

7. This staff would recommend a settlement based upon the total allowable cost on Item I only -- plus a reasonable profit.

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